

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and regulations.
(Also: Part I, §§ 301, 305)

Revenue Procedure 2008-68

SECTION 1. PURPOSE

This revenue procedure provides temporary guidance regarding certain stock distributions by real estate investment trusts (REITs).

SECTION 2. BACKGROUND

.01 Section 305(a) of the Internal Revenue Code (“Code”) provides that, except as otherwise provided in section 305, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

.02 Section 305(b)(1) provides that section 305(a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which section 301 applies, if the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either in its stock or in property.

.03 Section 305(b)(2) provides that section 305(a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which section 301 applies, if the distribution (or a series of distributions of

which such distribution is one) has the result of the receipt of property by some shareholders, and an increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation.

.04 Section 1.305-2 of the Income Tax Regulations provides that under section 305(b)(1), if any shareholder has the right to an election or option with respect to whether a distribution shall be made either in money or any other property, or in stock or rights to acquire stock of the distributing corporation, then, with respect to all shareholders, the distribution of stock or rights to acquire stock is treated as a distribution of property to which section 301 applies regardless of--

- (1) Whether the distribution is actually made in whole or in part in stock or in stock rights;
- (2) Whether the election or option is exercised or exercisable before or after the declaration of the distribution;
- (3) Whether the declaration of the distribution provides that the distribution will be made in one medium unless the shareholder specifically requests payment in the other;
- (4) Whether the election governing the nature of the distribution is provided in the declaration of the distribution or in the corporate charter or arises from the circumstances of the distribution; or
- (5) Whether all or part of the shareholders have the election.

.05 Section 1.305-1(b)(2) provides that where a corporation which regularly distributes its earnings and profits, such as a regulated investment company, declares a

dividend pursuant to which the shareholders may elect to receive either money or stock of the distributing corporation of equivalent value, the amount of the distribution of the stock received by any shareholder electing to receive stock will be considered to equal the amount of the money which could have been received instead.

SECTION 3. SCOPE AND APPLICATION

The Internal Revenue Service will treat a distribution of stock by a corporation that qualifies as a REIT under part II of subchapter M of the Code as a distribution of property to which section 301 applies by reason of section 305(b), and the amount of such distribution of stock will be considered to equal the amount of the money which could have been received instead, if ---

(1) The distribution is made by the corporation to its shareholders with respect to its stock;

(2) Stock of the corporation is publicly traded on an established securities market in the United States;

(3) The distribution is declared with respect to a taxable year ending on or before December 31, 2009;

(4) Pursuant to such declaration each shareholder may elect to receive its entire entitlement under the declaration in either money or stock of the distributing corporation of equivalent value subject to a limitation on the amount of money to be distributed in the aggregate to all shareholders (the "Cash Limitation"), provided that--

(a) such Cash Limitation is not less than 10% of the aggregate declared distribution, and

(b) if too many shareholders elect to receive money, each shareholder electing to receive money will receive a pro rata amount of money corresponding to their respective entitlement under the declaration, but in no event will any shareholder electing to receive money receive less than 10% of their entire entitlement under the declaration in money;

(5) The calculation of the number of shares to be received by any shareholder will be determined, as close as practicable to the payment date, based upon a formula utilizing market prices that is designed to equate in value the number of shares to be received with the amount of money that could be received instead. For purposes of applying subsection (4) of this Section 3, the value of the shares to be distributed shall be determined by using the formula described in the preceding sentence; and

(6) With respect to any shareholder participating in a dividend reinvestment plan ("DRIP"), the DRIP applies only to the extent that, in the absence of the DRIP, the shareholder would have received the distribution in money under subsection (4) of this Section 3.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective with respect to distributions declared on or after January 1, 2008.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is T. Ian Russell of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure contact T. Ian Russell on (202) 622-7550 (not a toll free call).